

SENATE BILL REPORT

SB 6750

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 05, 2008

Title: An act relating to industrial insurance benefits on appeal.

Brief Description: Providing for stays of industrial insurance orders on appeal.

Sponsors: Senators Kohl-Welles, Roach, Kline, Keiser, Pridemore, McDermott and Franklin.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 1/31/08, 2/05/08 [DPS, DNP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6750 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Franklin, Murray and Prentice.

Minority Report: Do not pass.

Signed by Senators Holmquist, Ranking Minority Member; King.

Staff: Mac Nicholson (786-7445)

Background: Workers injured in the course of employment may receive various benefits under the Industrial Insurance Act, including payment for medical care directly related to the accident and time loss compensation. With limited exceptions, an injured employee will continue to receive Department of Labor and Industries (L&I) benefits until the claim is closed. Individuals awarded time loss compensation receive their first check within 14 days of L&I receiving notice that the individual is off work.

An injured worker, the worker's employer, and the injured worker's doctor may protest or appeal any decision about the claim made by L&I. A protest or appeal must be filed within 60 days from the date the order or decision is communicated to the parties. The protest may be a written request for reconsideration filed with L&I, or an appeal filed with the Board of Industrial Insurance Appeals (BIIA).

When the BIIA receives an appeal and determines it has proper jurisdiction, the BIIA will issue an order granting appeal. In appeal before the BIIA, the party appealing the decision has

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

the burden of showing that L&I's decision was incorrect. Any party who disagrees with a BIIA order may appeal the order within 30 days to superior court.

Summary of Bill (Recommended Substitute): An L&I order awarding benefits is effective and benefits are due on the date the order is issued. If an order is appealed, benefits will continue to be paid unless the BIIA stays the order. Any party may ask the BIIA to stay the L&I order within 15 days of the BIIA order granting appeal. When a motion to stay an order on appeal is filed, the BIIA must conduct an expedited review of the claim file and issue a final decision within 25 days. The BIIA's final review may be appealed to superior court.

The BIIA must grant a motion to stay if the BIIA determines that it is more likely than not that the moving party will prevail on the facts as they existed at the time of the order. The BIIA cannot consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay.

If a worker or medical provider requests reconsideration of a permanent partial disability award and L&I issues an order to increase that amount, the original amount of the award will not be stayed. If the order granting the increase is appealed, however, the amount of the increase will be stayed pending a final decision on the merits.

If a self-insured employer appeals an order setting the time loss rate of a claimant, time loss or pension benefits will be paid based on the rate calculation the employer most recently submitted to L&I. Benefits paid at this amount cannot be stayed. If the order granted benefits at an increased rate and the order is appealed, payment of time loss or pension benefits at the increased rate will be stayed pending a final decision on the merits.

The legislation applies to orders issued on or after the effective date.

EFFECT OF CHANGES MADE BY LABOR, COMMERCE, RESEARCH & DEVELOPMENT COMMITTEE (Recommended Substitute): The substitute removes language stating that L&I's order was presumed to be correct and adds language applying the legislation to orders issued on or after the effective date. The substitute also changes the 30 day review, 40 day final decision time requirements to a 25 day period for final decision.

Appropriation: None.

Fiscal Note: Requested on January 23, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: The legislation recognizes a simple truth, certain and automatic relief cannot serve its purpose if benefits are delayed or denied simply because of an employer's appeal. Self insurers aren't required to pay benefits until final decision has been issued by the BIIA, even after L&I has issued an order approving benefits, and this isn't equitable to the injured worker. This bill brings balance to the system by protecting the worker and giving the employer an expedited appeal.

CON: Self insurers are concerned about increased costs in Washington, and this legislation will increase costs. The average appeals process takes nine months, and self insurers

shouldn't have to pay benefits during that time. This bill will create further inequities for the employers in the workers compensation system. There are things that can make the bill more palatable to self insurers, including having L&I repay the employer if the employer wins, eliminate the presumption in favor of L&I, pay only wage replacement benefits while on appeal, require payment on appeal only when the BIIA has issued a decision about whether the stay is granted or not, and requiring L&I to help recover payments if the employer wins on appeal. The employer faces difficulties recovering payment when the employer wins on appeal because employers don't have the same tools that L&I has.

OTHER: L&I and BIIA are neutral on the bill and have some suggested amendments.

Persons Testifying: PRO: Owen Linch, Teamsters; Janet Dickson; Karen Gude, UFCW Local 1439; Kevin Rojecki, Firefighters; Michael Temple, Washington State Trial Lawyers Association.

CON: Kris Tefft, AWB; Dawn Yeager, Weyerhaeuser; Lori Hanson, Boeing; Kathleen Collins, Washington Self Insurer's Association.

OTHER: Frank Fennerty, Tom Eyan, BIIA; Vickie Kennedy, L&I.